

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

PROGRESSIVE MINERALS, LLC,

Plaintiff,

v.

CIVIL ACTION NO. 5:07CV108

MUHAMMAD HAROON RASHID,
GERALD D. HENDRIX, DAVID M.
BERNSTEIN, and JUDE O'NURKERA,

Defendants.

TRANSCRIPT/MOTIONS TO COMPEL

June 11, 2009, at 2:07 p.m.

Wheeling, West Virginia

BEFORE:

JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:
(Via Telephone)

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2300 Trammell Crow Center
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(Continued)

Proceedings recorded by electronic sound recording, transcript
produced by official court reporter.

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Also: Arch A. Moore, Jr.

For the Defendants:

PATRICK S. CASEY, ESQ.
Burns, White & Hickton, LLC
32-20th Street
Wheeling, WV 26003

1 THE COURT: Good afternoon, this is Jim Seibert. Who is
2 on the telephone, please?

3 MR. PARHAM: Your Honor, this is Dave Parham, with Baker
4 & McKenzie in Dallas.

5 THE COURT: All right, thank you very much. This is
6 Progressive Minerals v. Rashid, Hendrix, Bernstein and O’Nurkera, is
7 my best guess on the pronunciations, 5:07CV108. This time was set
8 for an Evidentiary Hearing and Argument on the Plaintiff’s Motion to
9 Compel Mediation and Motion to Compel Responses to Plaintiff’s
10 Request for Production of Documents and Answers to Plaintiff’s
11 Interrogatories to Defendant David M. Bernstein.

12 For the Plaintiff, we have here Mr. Manning and –

13 MR. CARTER: Your Honor, my name is Mark Carter. I am
14 also at Dinsmore & Shohl in its Charleston offices.

15 THE COURT: Mr. Carter?

16 MR. CARTER: And also our – the representative of our client
17 is here, Arch A. Moore, Jr.

18 THE COURT: Governor, nice to see you. And for the
19 Defendant we have Mr. Casey, anyone else?

20 MR. CASEY: No, Your Honor.

21 THE COURT: Thank you. First, who is going to speak for the
22 Plaintiff, please?

23 MR. CARTER: Your Honor, two motions have been called by
24 the Court. One, a Argument regarding the Motion to Compel. Mr.
25 Manning will be handling that argument. With regard to the Letters

1 Rogatory, I will be handling that argument, sir.

2 THE COURT: Thank you. Mr. Manning, do you have any
3 testimony or other evidence to support – to offer in support of the
4 Motion to Compel – I mean, it’s Mr. Carter with respect to the Motion
5 to Compel?

6 MR. CARTER: No, I’m sorry, Your Honor, it is Mr. Manning.

7 THE COURT: Okay, Mr. Manning, any testimony or other
8 evidence?

9 MR. MANNING: Other than what was attached to the motion,
10 Your Honor, no, we attached the Certificates of Service to the motion
11 as well as the Notice of Deposition, I believe.

12 THE COURT: Mr. Carter, as to your motion.

13 MR. CARTER: Your Honor, we are prepared to present
14 evidence as the Court desires. I would simply note for the Court, that
15 the testimonial and documentary evidence that we would present
16 through Governor Moore, has been submitted to the Court and is on the
17 record in the form of – of declaration and affidavit by Governor Moore
18 that attaches all the relevant documents, as well as, affidavits
19 submitted by Mr.’s Crosbie and Reynolds, who are the subject of the
20 Letters Rogatory. And we are happy to proceed as you wish, Your
21 Honor.

22 THE COURT: Well, Judge Stamp would say to me that I am
23 not smart enough to tell anybody how to practice law and it’s up to
24 you. I’d be pleased to accept it in the form it’s already submitted or if
25 you prefer another way, that’s fine with me, too.

1 MR. CARTER: Your Honor, obviously, it is our desire to – and
2 I recognize the Court's instruction about how to practice law. If the
3 Court – I would simply move that the Court acknowledge the affidavit
4 and the documentary evidence as evidentiary submissions in support of
5 its Motions Rogatory. My hope is that it would be more convenient to
6 the Court to simply take notice of what's in the record already as in
7 the form of evidence, and permit legal argument regarding the
8 entitlement of the Plaintiff to the Letters Rogatory.

9 THE COURT: All right. Mr. Casey, any objection to that?

10 MR. CASEY: No, objection, Your Honor.

11 THE COURT: All right, it will be so noted by me. And now
12 Mr. Casey, do you have any testimony or other evidence to offer in
13 opposition to either motion?

14 MR. CASEY: No, Your Honor. I – I am sure you have
15 noticed from the file that I am in a bit of a quandary.

16 THE COURT: Yeah, the Judge kept you in the case.

17 MR. CASEY: Yes, sir. And – and there are and I have no
18 evidence to offer. I, obviously, have comments and argument to offer
19 but some of which I would ask the Court to take up *in camera* because
20 of the attorney/client privilege. But so I – I have no evidence to offer,
21 Your Honor, but I do – I would – if, Your Honor, has questions I
22 would ask the opportunity to address you *in camera* about matters that
23 might be confidential.

24 THE COURT: Thank you. Then I guess it's time to hear from
25 Mr. Manning first. And Mr. Manning, would you come to the podium

1 for two reasons, so that Mr. Parham on the telephone as well as the
2 record gets down everything you say, please, sir.

3 MR. MANNING: Sure, Your Honor. Your Honor, with regard
4 to the Motion to Compel, it's relatively straightforward. With regard
5 to the interrogatory portion of it, we served our Interrogatories and
6 Request for Production on March 24th. That would have made
7 responses due on April 26th or 27th because the 26th was a Monday – or
8 a Sunday, and we have not received any responses to either the
9 Interrogatories or the Request for Production of Documents. We did
10 receive responses to Request for Admission with at least one of those
11 Request for Admission having been changed since we submitted it.

12 We – I did confer with Mr. Casey during the course of – before
13 the mediation and regarding his Motion to Withdraw the rescheduling
14 of the mediation and those things. And Mr. Casey did ask me for time
15 to response to the discovery requests. At the time, what he asked for
16 was an extension. What I told him was, at the time we had a Notice of
17 Deposition pending for his client which would have had the deposition
18 occur on May 6th, and we wanted the documents and the responses to
19 the interrogatories before that deposition so that we could use the
20 deposition to inquire about them. Obviously, the deposition was
21 cancelled but since May 6th, we have not had any responses whatsoever
22 to either the Interrogatories or the Request for Production of
23 Documents.

24 With regard to the deposition, as I said, we filed a Notice – or
25 served a Notice of Deposition indicating that we intended to take Mr.

1 Bernstein's deposition on May 6th, that would have been the day after
2 the mediation which was to occur by Judge Stamp's Order here in
3 Wheeling. We scheduled the deposition for May 6th for the day after,
4 so that we could save all of the parties and all of the attorneys costs
5 by holding the deposition where the mediation was to be scheduled.

6 We – when we served the Notice of Deposition, Mr. Casey
7 informed us that his client did not intend to attend the mediation and
8 therefore, would not be in town to attend the deposition either. And
9 there has been on Motion to Quash the deposition. There has been no
10 Motion for a Protective Order seeking to move its location or anything
11 like that. There is, in fact, been no response other than my
12 conversation with Mr. Casey in which he told us verbally that his
13 client did not intend to attend the deposition.

14 And finally, with regard to the mediation, there was never any
15 Motion to Continue the Mediation or move the mediation, other than
16 Mr. Casey's request to move the mediation because of his Motion to
17 Withdraw, less than 24 hours before the mediation was to occur. That
18 mediation was Ordered by Judge Stamp. We are in a position to
19 proceed with the mediation and we are ready to proceed with it and
20 we'd ask as we have in the motion, that the mediation be rescheduled
21 for and a date that the Court would choose, in Wheeling, as it was to
22 be scheduled originally. And that the deposition, as it was to be
23 scheduled originally, be scheduled in Wheeling either on the day
24 before the mediation or the day after the mediation. There has been no
25 reason given to us other than a verbal reason why that couldn't occur.

1 And therefore, we'd ask that those be – that those two, the mediation
2 and the deposition occur back-to-back to save all of the parties and all
3 of the attorneys costs.

4 TH4E COURT: Thank you very much.

5 MR. MANNING: Thank you, Your Honor.

6 THE COURT: Mr. Casey, would you share with me what you
7 feel comfortable sharing on the record, please, sir, on Mr. Manning's
8 motion.

9 MR. CASEY: Yes, Your Honor, it is – it is, obviously, we did
10 not file responses to the – to the discovery. We filed responses to the
11 Request for Admissions, it all revolves around the difficulty in getting
12 the information. I informed counsel a few weeks before the mediation,
13 that I would not be available for the deposition and that it needed to be
14 rescheduled. I also, asked for the extension which was not granted.
15 And I put – all I can say is, I put the other parties on notice as soon as
16 I was aware that these matters were not going to go forward and I did
17 not want to put any parties in – to the expense and inconvenience of
18 having to go forward with it. As you know, I filed the motion to
19 postpone the mediation and the mediation was postponed, and I have
20 New York counsel that is not present today and he is in more contact
21 with the client than I am. And I really have no further information
22 than that, Your Honor.

23 THE COURT: And did – are you able to share with me why
24 Mr. Kramer chose not to be with us today –

25 MR. CASEY: I was –

1 THE COURT: – including the fact that he had the opportunity
2 to appear by telephone?

3 MR. CASEY: I learned yesterday, he was not going to appear.
4 I think Mr. Manning knew before I did that he was not going to appear.
5 Because, I asked Mr. Manning if he was included in the – the
6 discussion about being on the telephone. Apparently, he had been
7 contacted by Mr. Schuler sometime before and had informed him that
8 he was going to St. Louis today. I did not know that until yesterday.
9 So that's the – he's on an airplane as far as I know either going to St.
10 Louis or in St. Louis and I didn't – I think Mr. Manning knew that
11 before I did.

12 THE COURT: All right, thank you very much.

13 MR. CASEY: Yes, sir.

14 THE COURT: As far – I apologize, Mr. Casey, as far as you
15 know, Mr. Kramer still intends to be counsel of record? As far as you
16 know?

17 MR. CASEY: As far as I know, Your Honor, I have
18 communicated with him several times about getting new responsible
19 local attorney and as far as I know he continues to be involved. He is
20 fully aware that I do not want to be involved for the reasons that I
21 would like to discuss with, Your Honor. And as far as I know, he's
22 going to be involved.

23 THE COURT: All right, thank you very much. We'll see if
24 we can't bring the matter to Mr. Kramer's attention

25 Now, Mr. Carter –

1 MR. CARTER: Yes.

2 THE COURT: – would you come up and – and share with me
3 your thoughts about the Letters Rogatory?

4 MR. CARTER: Yes, Your Honor, thank you for the
5 opportunity.

6 Your Honor, I will be making frequent – frequent reference to
7 the Affidavit of Governor Moore which appears in Progressive's
8 Memorandum in Opposition of Motion to Dismiss Mr.'s Bernstein,
9 Crosbie and Reynolds.

10 As, Your Honor, is likely – as, Your Honor, is certainly aware,
11 Judge Stamp entered an Order that dismissed Mr. Crosbie and Mr.
12 Reynolds from this litigation and retained jurisdiction over Mr.
13 Bernstein, who remains a named defendant in this litigation.

14 Very briefly, the context of Governor Moore's affidavit and I
15 will refer to certain documents by the letters to -- that they are
16 identified by as attachments in that affidavit, if I may, Your Honor.

17 This case arises out of a business transaction which Progressive
18 alleges in its complaint constitutes fraud among other torts. Governor
19 Moore was the sole shareholder and is the sole shareholder of
20 Progressive Minerals, a West Virginia corporation. And in that
21 capacity, he was introduced to Dr. Rashid, the named defendant, who is
22 also the principal of Global Empire Investments and Holdings which
23 we call Global Empire to save words.

24 Your Honor, Governor Moore testified in his affidavit that he
25 was introduced to Global Empire by a friend, who also submitted an

1 affidavit. And that gentleman was trying to assist Governor Moore in
2 trying to find a financier for the purchase of coal operations and coal
3 lands in southern West Virginia. Specifically, near the Town of
4 Bishop in McDowell County, a mine known as Red Fox.

5 Mr. – or Governor Moore testified in his affidavit that he was
6 looking for financiers to assist Progressive in either purchasing the
7 coal operations in McDowell County or, to arrange for the broker of
8 that property to sell that property to an interested buyer. That upon
9 learning of Global Empire, Governor Moore telephoned Dr. Rashid, the
10 principal, and solicited information regarding Global Empire. Global
11 Empire then sent three very important facsimiles to Progressive
12 Minerals through – through the individual in Pittsburgh that detailed
13 what Global Empire was and who is associated with that corporation.

14 The facsimiles are attached as Exhibit A, B and C to Governor
15 Moore's affidavit. Of particular relevance to those facsimiles from
16 Dr. Rashid to Governor Moore, is his identification of the organization
17 structure of Global Empire. The Global – the organization structure
18 of that corporation according to that power point and that facsimile
19 was Dr. Rashid, as the principal and at the top of the organization
20 chart. And then of the three directors who are identified in that
21 organization chart, the two – two of those three directors appearing
22 directly below Dr. Rashid are John Crosbie and John Reynolds, beneath
23 that is Defendant David Bernstein, Defendant Gerald Hendrix and
24 another individual.

25 Along with the facsimile of the power point presentation that

1 Governor Moore received April 26, 2005, were curriculum vitae of the
2 primary agents of Global Empire as provided by Dr. Rashid. They
3 include curriculum vitae for John Crosbie and John Reynolds, both
4 Canadian citizens, both the subjects of this – of these Letters
5 Rogatory. And the curriculum vitae prominently described their role
6 in Global Empire in the documents transmitted by Dr. Rashid to
7 Governor Moore.

8 Governor Moore testified in his affidavit that based upon these
9 representations he was quite interested in Global Empire, both because
10 of their financial representations but also significantly because of the
11 reputation and statute of Mr. Crosbie and Mr. Reynolds, who Governor
12 Moore immediately recognized to be prominent Canadian elected
13 officials with sterling reputations in the Nation of Canada. And
14 Governor Moore having had a history in the political field, was
15 immediately impressed by their involvement with the corporation and
16 assigned a great deal of credibility to the corporation because of their
17 involvement, and was certainly induced to continue to deal with Global
18 Empire towards trying to seek a financial arrangement with them for
19 financing of the purchase of these coal lands and so it did continue.

20 On – in Exhibit F, Governor Moore attaches a term agreement
21 between Global Empire and Progressive for the financing of
22 \$200,000,000.00 for the purchase of the coal lands in southern West
23 Virginia.

24 In Exhibit G, there is a corporate guarantee that is attached to
25 his affidavit which is an agreement between Dr. Rashid on behalf of

1 Global, and Governor Moore on behalf of Progressive, whereby Global
2 Empire assured Progressive and Dr. Rashid assured Progressive and
3 Governor Moore, that a \$750,000.00 commitment fee that Progressive
4 would be required to submit to Global Empire, would be returned if the
5 financial transaction contemplated by the term agreement was not
6 consummated.

7 Exhibit H, to Governor Moore's affidavit contains a contract or
8 I'm sorry, Your Honor, it contains wire transfer records evidencing a
9 \$200,000.00 payment to Global Empire by Progressive on June 29th, and
10 a \$50,000.00 payment on June 30th, that immediately followed the
11 execution of the term agreement and the corporate guarantee.

12 Exhibit I, contains a copy of the contract executed, signed by Dr.
13 Rashid on behalf of Global, and Governor Moore on behalf of
14 Progressive, for the consummation of the \$200,000,000.00 financing
15 upon certain due diligence being conducted. Governor Moore's
16 affidavit – in his affidavit, he testifies that the due diligence took
17 place and a meeting was scheduled eventually on October 12th for – or
18 I'm sorry, on October 10th, for a closing meeting where – wherein the
19 actual financial transaction would take place of the transfer of the
20 \$200,000,000.00, and the purchase of the coal lands would take place
21 because the owners of the Red Fox mine were present at that meeting
22 in Houston, Texas. He testified -- Governor Moore testified that at
23 that meeting, Dr. Rashid and Mr. Bernstein, the Defendant, were
24 present and that very significantly at that meeting, Mr. Bernstein made
25 frequent reference in the presence of Dr. Rashid to the relationship of

1 Mr. Crosbie and Mr. Reynolds to Global Empire. The affidavit
2 communicates that they both were active participants. Mr. Bernstein
3 stated that there were active participants in Global Empire, that there
4 was discussion concerning their interest in the accomplishments of
5 Governor Moore's daughter, who is an elected member of the United
6 States House of Representatives, and their continuing interest in this
7 transaction and its accomplishment.

8 On October 10th, the financial arrangement, however, was not
9 consummated nor was the transfer of title to the land. Rather, Mr.
10 Bernstein presented to Governor Moore and the document appears as –
11 as an exhibit. And, Your Honor, I apologize, I have an exhibit
12 number for it but I didn't have the letter number for it, but there is an
13 October 10th correspondence from Mr. Bernstein to Governor Moore
14 identifying other areas which he believed needed to be investigated as
15 a matter of due diligence regarding the transaction. Governor Moore
16 responded immediately, that all of that information had been provided
17 but he was – he continued to be interested in consummating the
18 financial transaction and the ultimate deal. The affidavit concludes
19 by stating, that despite the efforts to continue to seek the transaction,
20 it ultimately never was fulfilled.

21 And appearing as Exhibit N, is a letter from Mr. Bernstein and to
22 Governor Moore on January 13, 2006, where Mr. Bernstein again
23 makes reference to Mr. Crosbie and states that he is continuing to
24 assist Mr. Crosbie in some political efforts and then has a one sentence
25 explanation that he will be happy to conclude a settlement of the

1 outstanding issue in the next week. That, of course, would be the
2 return of the commitment fee of \$750,000.00 which Progressive had
3 provided to Mr. – Dr. Rashid and Mr. Bernstein and the other
4 principals of Global Empire.

5 At issue here immediately and I appreciate the Court's tolerance
6 in that, perhaps, too long factual recitation but what is of particular
7 relevance to the – to the motion, is the – whether or not Progressive is
8 entitled to petition this Court for Letters Rogatory to seek discovery
9 from Mr. Crosbie and Mr. Reynolds in – in the Nation of Canada.

10 Now Letters Rogatory, are – the issuance of Letters Rogatory is
11 – is a matter that is within the sound discretion of every United States
12 District Court to either grant or not grant. There is statutory authority
13 regarding Letters Rogatory at 28 United States Code – United States
14 Code, Section 1781. Letters Rogatory are anticipated by the Federal
15 Rules of Civil Procedure in 28(b)(1)(B) but ultimately there are – it is
16 a matter within the discretion of the Court as to whether or not the
17 Court desires to or feels that Letters Rogatory are appropriate.

18 Letters Rogatory are in essence a declaration by a United States
19 Court, that it would be appropriate for a foreign nation to honor those
20 Letters Rogatory and itself compel the participation in discovery of its
21 own citizens. Essentially, after the Letters Rogatory issued from the
22 United States District Court, it is then a matter that is incumbent upon
23 the party to enforce through the foreign court system with or without
24 the assistance of the United States Department of State. But it's
25 within the Court's discretion as a matter of first instance, whether or

1 not those Letters Rogatory are called for under the circumstance of the
2 case.

3 The courts generally focus on two primary issues with regard to
4 issuing Letters Rogatory; that is unavailability of the witnesses
5 without the issuance of the Letters Rogatory; and, what relevance or
6 materiality the evidence is that is being sought from the individuals
7 who are the subject of the Letters Rogatory.

8 With regard to the unavailability of the witnesses at issue here,
9 Mr. Crosbie and Mr. Reynolds, it is important to note that Progressive
10 is without authority to compel their participation in the discovery
11 process or to submit to depositions absent the issuance of Letters
12 Rogatory. They are foreign nationals. This Court has expressly held
13 that it is not taking jurisdiction over those gentlemen. So absent the
14 issuance of Letters Rogatory, Progressive would have no means to
15 compel their participation.

16 Beyond that, both Mr. Crosbie and Mr. Reynolds have submitted
17 affidavits to this Court in support of their Motion to Dismiss that was
18 filed earlier this year, I believe, Your Honor. And in those affidavits
19 which are part of the record before the Court, both of them evidenced
20 tremendous hostility towards the pursuit of this litigation by the
21 plaintiff corporation, indeed asked the Court to sanction Plaintiff's
22 counsel, and – and testified, both witnesses testified that they had
23 nothing to do with the matter despite acknowledging that both of them
24 had met Dr. Rashid, one of the named defendants in this litigation
25 within the United States.

1 Dr. Rashid presented a – an affidavit in support of that motion
2 on behalf of those gentlemen where he echoed the same sentiments
3 with regard to Progressive, but also testified acknowledging that he
4 had met Mr. Crosbie and Mr. Reynolds at the introduction of David
5 Bernstein, another named defendant, in the United States to discuss a
6 business venture. The nature of that business venture was never
7 discussed or the subject of description by Dr. Rashid in his affidavit.
8 However, he testified himself that that was one of the topics that was
9 discussed between himself, Mr. Bernstein, Mr. Crosbie and Mr.
10 Reynolds.

11 Your Honor, that goes directly toward the issue of materiality or
12 relevance. In the record before the Court is affidavit testament from
13 the two subjects of this litigation, who acknowledge having met with
14 one of the defendants personally. That defendant, Dr. Rashid, has
15 testified before this Court and on the record of this Court, that the
16 subject of the discussions in the United States of America was the
17 pursuit of a business venture. This – Dr. Rashid also testified that he
18 met them at the – at the introduction of Mr. Bernstein. And it's
19 important to note that the January 13, 2006 correspondence of Mr.
20 Bernstein to Governor Moore, again, makes reference to Mr. – Mr.
21 Crosbie as an individual with whom he was maintaining a relationship
22 in assisting in political ventures.

23 And finally, there is the affidavit testimony of Governor Moore
24 which is that Mr. Bernstein and – and the folks at Progress – at Global
25 Empire made consistent references to Mr. Crosbie and Mr. Reynolds,

1 that they included their CV's in the initial communication between the
2 corporation. That they identified both of those gentlemen as directors
3 of the corporation and it is plain by all of their admission that some
4 relationship exists. But the extent of that relationship, the scope, the
5 nature of it, is not precisely clear and that is material to this case. For
6 one of two factual scenarios almost certainly exist. One, is that Mr.
7 Crosbie and Mr. Reynolds had nothing to do with the – with the
8 transaction between Dr. Rashid and Governor Moore and that their
9 images, their names, their reputations were being used wrongfully by
10 Mr. Bernstein and Dr. Rashid, and that is material to the establishment
11 of fraud on behalf of those defendants.

12 The other factual scenario that could exist, is that Mr. Crosbie
13 and Mr. Reynolds were, in fact, complicit with – with Dr. Rashid and
14 Mr. Bernstein, that, in fact, they did discuss business ventures as Dr.
15 Rashid testified, consummated them and that they were involved in this
16 transaction. However, absent the issuance of Letters Rogatory by this
17 Court, we'll never know and that is the basis of our argument and our
18 appeal to this Court to issue Letters Rogatory that would enable our
19 discovery as to what the truth really is here.

20 THE COURT: Thank you very much. Mr. Casey?

21 MR. CASEY: Your Honor, I have no position on the request
22 for the Letters Rogatory.

23 THE COURT: Thank you very much. Have you scheduled
24 some depositions? Do I have a recollection from reading the
25 pleadings?

1 MR. CARTER: Your Honor, if I might –

2 MR. PARHAM: We have – we are going to need to change
3 them because we have not been able to get agreements on dates and
4 whatnot. So we will need to provide new dates to the Court or have it
5 open-ended and open-ended would be fine with us.

6 THE COURT: All right, thank you very much. All right, I
7 think I understand everything. I did want to ask you Mr. Casey, do
8 you – I understand that you have no position on this motion and that's
9 fine. Was there any part of the factual recitation by Mr. Carter that
10 you feel compelled to take issue with?

11 MR. CASEY: No, Your Honor.

12 THE COURT: All right. Then the last thing before we adjourn
13 here today. Mr. Casey, if you have occasion to communicate with Mr.
14 Kramer, would you tell him that: a) I am disappointed he wasn't able
15 to join us today; and b) I am an old man and I can't remember anything
16 but it seems to me maybe the time either has run or is close to running
17 on his providing or his client providing local counsel and if you would
18 share those thoughts with him, I would appreciate it.

19 MR. CASEY: Yes, sir, I sure will.

20 THE COURT: Thank you very much.

21 MR. CASEY: Thank you, sir.

(WHEREUPON, the proceeding was concluded at 2:34 p.m.)

REPORTER'S CERTIFICATE

I, Sue Hatley, Official Court Reporter for the United States District Court, Northern District of West Virginia, sitting at Elkins, West Virginia, do hereby certify that the foregoing transcript is, to the best of my skill and ability, a true and accurate transcript of the proceedings had or testimony adduced in the aforementioned case as set forth on the title page hereof.

Given under my hand this 19th day of June, 2009.

/S/ SUE HATLEY
SUE HATLEY
Official U.S. Court Reporter